

EXHIBIT 53

**REDACTED VERSION OF
DOCUMENT SOUGHT TO BE
SEALED**

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

WAYMO LLC,

Plaintiff,

vs.

Case No.

UBER TECHNOLOGIES, INC.; 17-cv-00939-WHA

OTTOMOTTO, LLC; OTTO

TRUCKING LLC,

Defendants.

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

VIDEOTAPED DEPOSITION OF DAVID DRUMMOND

Palo Alto, California

Monday, August 21, 2017

Volume I

REPORTED BY:

REBECCA L. ROMANO, RPR, CSR No. 12546

JOB NO. 2677782

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1 A. I understand that Waymo [REDACTED] [REDACTED]
[REDACTED] yes.

3 Q. And when you say --
4 (Brief interruption.)

5 Q. (By Mr. Gonzalez) Sir, when you say that 01:10:37

6 [REDACTED]
[REDACTED]
[REDACTED]

9 A. Yes, they are -- my understanding is that
10 they are [REDACTED] [REDACTED]

[REDACTED]

12 Q. And -- and wouldn't you agree that [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

01:11:09

16 A. I -- I don't know if that's true.

17 Q. Why do you say that?

18 A. It -- it -- [REDACTED]
[REDACTED] so I'm not sure it's in

20 direct competition, among other things. 01:11:22

21 Q. [REDACTED]
[REDACTED]
[REDACTED]

24 A. I don't know.

25 Q. Do you recall that the issue of Google 01:11:38

1 [REDACTED] came up during the 01:11:41
2 time that you served on Uber's board?

3 A. Yes, I recall that that topic came up.

4 Q. And when it came up, did it cause you
5 concern [REDACTED], given that 01:11:55
6 you were the top legal officer for Google and at
7 the same time a board member for Uber?

8 A. It caused me to -- it caused us to have
9 discussions about it at -- at some point in time,
10 yes. 01:12:09

11 Q. And when you say "discussions,"
12 discussions with who?

13 A. Principally, with Travis Kalanick.

14 Q. When did you first inform Mr. Kalanick
15 that [REDACTED] [REDACTED]

16 [REDACTED]
17 A. I can't recall exactly when the two of us
18 had conversations about it.

19 Q. Do you recall generally?

20 A. I know that -- oh, the topic came up 01:12:34
21 sometime around -- there was a conference in
22 Southern California, the Code Conference, I believe
23 it's called -- and the topic of that came up, I
24 think, in -- in connection with remarks that
25 Sergey Brin gave at the con- -- at the conference, 01:12:50

1 and Travis and I had a conversation about that 01:12:52
2 then.

3 Q. Did you and Mr. Kalanick have
4 conversations about Mr. Brin's remarks before or
5 after he made his remarks? 01:13:05

6 A. I don't -- I don't recall whether there
7 was any conversation before. I do remember there
8 was a conversation after, I believe.

9 Q. And how did it come up?

10 A. Travis raised the issue with me. 01:13:15

11 Q. Mr. Kalanick expressed concern to you
12 about what Mr. Brin had said publicly?

13 A. Yes.

14 Q. Do you remember where that conference
15 was? 01:13:26

16 A. It was in Southern California, I believe,
17 at the Terranea Resort.

18 Q. Was that Rancho Palos Verdes?

19 A. That's -- that's correct.

20 Q. I even pronounced it right, too. 01:13:38

21 A. Impressed.

22 Q. Okay. I want to make sure we're talking
23 about the same conference.

24 Okay?

25 A. Sure. 01:13:44

1 Q. So what was it that Mr. Kalanick said? 01:13:44

2 Did he call you afterwards or did you meet?

3 A. We were both present at the conference so
4 we spoke face-to-face.

5 Q. I see. 01:13:55

6 And did you speak immediately after the
7 presentation?

8 A. I don't remember.

9 Q. Do you remember where the two of you were
10 when you spoke? Was it in the hallway? Was in a 01:14:02
11 conference room?

12 A. I don't remember. We -- we may have been
13 walking.

14 Q. All right. Was anybody else present?

15 A. No, it was just the two of us. 01:14:14

16 Q. So the two of you had a little private
17 conversation?

18 A. That's correct.

19 Q. And -- and what did he say?

20 A. I recall him just expressing concern 01:14:20
21 about the possibility that [REDACTED]

[REDACTED]

[REDACTED]. And he had
24 concerns about that.

25 Q. What did you say in response? 01:14:42

1 A. Well, I think I told him that we were 01:14:46
2 one -- well, one of the -- that was -- as Sergey --
3 as I believe Sergey's remarks indicated, that that
4 was one of the things that we were considering.

5 And that, in any event, any competition was likely 01:14:55
6 quite a ways off and that we -- but we -- that we
7 should talk about these things as things developed.

8 Q. Is there anything else that was discussed
9 during that conversation?

10 A. Not that I recall. 01:15:18

11 Q. So your best recollection is the first
12 time that you had a conversation with anyone from
13 Uber about [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

17 A. That's a rec- -- I have that
18 recollection, yes.

19 Q. And when did the topic come up again
20 after that? 01:15:39

21 A. I don't recall specifically when the next
22 time the topic came up.

23 Q. And do you recall that over time
24 Mr. Kalanick continued to express concerns about

25 [REDACTED] 01:15:50

1 A. I remember him expressing concerns after 01:15:53
2 that.

3 Q. And what, generally, was your response?

4 A. Generally, my response was similar, that
5 we were -- we hadn't launched anything. We were 01:16:01
6 still deciding what we were going to do. And in
7 the event we did, any competition was a long ways
8 off, and we had a good partnership, we should
9 continue it.

10 Q. What was the good partnership that you 01:16:17
11 had at that time?

12 A. Well, we were investors in the company
13 and -- through Google Ventures, I should say, which
14 is a different entity than Google, although
15 owned -- controlled by Google. We had a 01:16:30
16 partnership [REDACTED]. And those were the main
17 partnerships, I believe.

18 Q. Let me show a document that we've marked
19 as Exhibit 1770.

20 (Exhibit 1770 was marked for 01:16:47
21 identification by the court reporter and is
22 attached hereto.)

23 Q. (By Mr. Gonzalez) Is this an email
24 exchange between you and Mr. Kalanick in January
25 of 2015? 01:17:04

1 A. That's what it appears to be. 01:17:10

2 Q. You'll see that the email string starts

3 at the bottom with Mr. Kalanick writing to you

4 about the Detroit auto show. And he says [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] "

8 Do you see that?

9 A. Yes, I do.

10 Q. And then you respond on the 18th. He 01:17:36

11 writes back to you. And then you write to him on

12 the 22nd, basically, saying -- agreeing with him

13 that you need to have a talk; is that right?

14 A. Well, to the extent you're referring

15 to -- yes, I think it's time for a chat, too. 01:17:56

16 That's what the email says.

17 Q. Let me show you 1771.

18 (Exhibit 1771 was marked for

19 identification by the court reporter and is

20 attached hereto.) 01:18:05

21 Q. (By Mr. Gonzalez) For the record, 1771

22 is another email exchange between you and

23 Mr. Kalanick; is that right?

24 A. Yes, that's what it appears to be.

25 Q. And Mr. Kalanick is forwarding to you, on 01:18:29

1 March 7, 2015, an email that he received from 01:18:32
2 someone saying [REDACTED]

3 [REDACTED]
4 Is that right?

5 A. That's what the email seems to say. 01:18:48

6 Q. And he is, once again, requesting a
7 meeting with Larry to talk about this issue which
8 is causing him additional concern.

9 Would that be fair?

10 A. That's what he seems to be asking about. 01:18:59

11 Q. And then you write back and say [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 Do you see that? 01:19:12

16 A. Yes, I do.

17 Q. And you also said to him, [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 So you had already spoken to Mr. Page 01:19:22
21 about the concerns that were being expressed by
22 Mr. Kalanick during this time period; is that
23 right?

24 A. Well, I don't -- I don't recall when and
25 whether I spoke to Larry during this time period. 01:19:32

1 I -- I will agree with you that the email says 01:19:36
2 that -- that I -- I -- I said that in the meeting.

3 Q. And so the email at least suggests that
4 you had already had at least one conversation with
5 Mr. Page about this. 01:19:47

6 Would that be fair?

7 A. Well, again, the email says that -- that
8 I wrote to Travis saying that I'll speak to Larry
9 again, yeah.

10 Q. Do you recall speaking to Mr. Page about 01:19:58
11 the concerns that were being expressed by
12 Mr. Kalanick?

13 A. I don't -- I don't recall speaking to him
14 in any particular time, certainly during this
15 period. But I recall having a -- a conversation 01:20:08
16 with him about it.

17 Q. And what was Mr. Page's message that he
18 asked you to deliver back to Mr. Kalanick?

19 A. I can't recall that he gave me any
20 message to deliver back. 01:20:22

21 Q. What was his response to the concerns
22 being expressed by Mr. Kalanick?

23 A. [REDACTED]
[REDACTED]
[REDACTED] 01:20:39

1 [REDACTED] 01:20:42

2 Q. And what do you mean by [REDACTED]

3 [REDACTED]?

4 A. Well, [REDACTED]

5 [REDACTED] [REDACTED]

6 [REDACTED]. So that it was -- these were -- this

7 is a technology that was still in development.

8 Q. Do you recall having a lunch meeting with

9 Mr. Page and Mr. Kalanick shortly after the date of

10 this email to discuss the concerns being expressed? 01:21:11

11 A. I remember a meeting with Larry and

12 Travis. I don't recall when it took place.

13 Q. (By Mr. Gonzalez) Let me show you

14 Exhibit 417.

15 This is a meeting invite for a lunch on 01:21:38

16 March 10, 2015, three days after the email exchange

17 I just showed you.

18 Does that sound about right with respect

19 to the date that you would have had this lunch that

20 you're referring to? 01:21:49

21 A. I have no reason to -- to doubt it.

22 Q. It references the location,

23 1900 Charleston Road, Mountain View.

24 Is that your headquarters?

25 A. That's on the Google campus, yes. 01:22:00

1 Q. And -- 01:22:03

2 A. And that's where I recall the meeting
3 take place.

4 Q. Right.

5 Now -- now, I don't want to get lawyer 01:22:07
6 technical, but you're saying meeting. This is
7 saying lunch.

8 Doesn't really matter to me, but was it a
9 lunch meeting or just a regular meeting?

10 A. I don't remember if there was food 01:22:14
11 present.

12 Q. All right. And --

13 A. At -- at Google -- at Google, there's
14 always food present.

15 Q. Yeah. Fair enough. 01:22:18

16 So other than you and Mr. Page and
17 Mr. Kalanick, do you recall if anyone else
18 attended?

19 This indicates an Emil Michael was
20 invited. 01:22:26

21 A. I -- I recall Emil being there. I'm
22 fairly certain he was there.

23 Q. Other than the four of you, anybody else
24 attend?

25 A. I don't recall anyone else attending, no. 01:22:34

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1 know that we talked from time to time. 01:53:16

2 Q. Was there ever an instance where you
3 reached out to him that you can recall where he
4 failed to respond?

5 A. I can't think of an -- such an instance. 01:53:24

6 Q. Why, in this instance, when you have
7 someone who allegedly took 14,000 files, why didn't
8 you reach out to Mr. Kalanick and just say to him,
9 "Hey, Travis, one of our former employees took a
10 bunch files. I'm concerned. I want to make sure 01:53:36
11 they're not at Uber"?

12 MR. VERHOEVEN: Well, again, to the
13 extent this "why" question calls for
14 attorney-client privileged communications or work
15 product communications, you should exclude those 01:53:51
16 from your answer.

17 THE DEPONENT: Well, I don't -- I -- I
18 can't think of an answer why to the -- to your why
19 question that would -- that wouldn't involve,
20 you know, something that's privileged. 01:54:01

21 Q. (By Mr. Gonzalez) Did you -- outside of
22 communications with lawyers, did you yourself
23 consider the possibility that you might be able to
24 just call Travis and tell him, "I understand
25 Anthony Levandowski may have taken some files. I 01:54:14

1 want to make sure they're not at Uber"? 01:54:15

2 MR. VERHOEVEN: For the record,

3 Mr. Drummond is a lawyer himself --

4 MR. GONZALEZ: Understood.

5 MR. VERHOEVEN: -- so to the extent you 01:54:25

6 can answer that without revealing confidential

7 attorney-client privileged information or work

8 product information, you can answer.

9 Q. (By Mr. Gonzalez) No, no. To be clear,
10 the question is separate and apart from any 01:54:35

11 conversations you may have had with lawyers, did

12 you yourself ever consider the possibility of just

13 calling Travis to tell him that "Hey, this guy may

14 have taken some files and I want to make sure

15 they're not at Uber"? 01:54:47

16 MR. VERHOEVEN: Same instruction.

17 THE DEPONENT: I don't believe I

18 considered that possibility at the time.

19 Q. (By Mr. Gonzalez) Why not?

20 MR. VERHOEVEN: Same instruction. 01:54:58

21 THE DEPONENT: I don't think I can answer

22 that without revealing something privileged.

23 Q. (By Mr. Gonzalez) If somebody has 14,000

24 of your client's files and you think those are

25 important, don't you think, generally speaking, 01:55:20

1 it's a fair thing to give them notice that "Hey, 01:55:23
2 one of our employees took your files"?

3 MR. VERHOEVEN: Object to the form.

4 THE DEPONENT: I don't know that I can
5 answer your hypothetical. 01:55:32

6 Q. (By Mr. Gonzalez) In this situation --
7 forget the hypothetical -- regardless of what your
8 lawyers may or may not have said --

9 A. Uh-huh.

10 Q. -- I'm not interested in that. 01:55:41

11 You had a personal relationship with
12 Mr. Kalanick. Didn't you think that it would be
13 reasonable to give him notice that the guy you just
14 hired has a bunch of our files?

15 MR. VERHOEVEN: Object to form. Same 01:55:50
16 instruction on privilege and --

17 THE DEPONENT: Again, there are a variety
18 of responses that you might have. But our
19 response, in this particular situation, I don't
20 think I can reveal to you, or how I was thinking 01:56:03
21 about it, without revealing to you privileged
22 information.

23 Q. (By Mr. Gonzalez) Did you do anything,
24 as the chief legal officer for Google, when you
25 learned that these files might have downloaded, to 01:56:13

1 make sure that somebody gave notice to Uber about 01:56:16
2 these files?

3 MR. VERHOEVEN: Objection.

4 To the extent that your answer would not
5 involve attorney-client communications or work 01:56:24
6 product communications, you may answer. Otherwise,
7 you may not.

8 THE DEPONENT: I -- I think -- thank you.
9 Sorry. Microphone disconnection.

10 I think all of the discussions around 01:56:53
11 finding out about the files involved sort --
12 you know, were -- involved our sort of legal
13 response, something illegal had been done. So I
14 think as the chief of -- you know, Alph- -- legal
15 officer of Alphabet, which is the owner of Waymo, I 01:57:13
16 think are -- you know, all of those conversations
17 were privileged.

18 Q. (By Mr. Gonzalez) All right. And I'm
19 setting aside all of those conversations.

20 A. Uh-huh. 01:57:25

21 Q. And I'm simply asking you, you get
22 involved in a lot of business discussions, right?

23 A. I do get involved in business
24 discussions, yes.

25 Q. And you have a lot of business 01:57:31

1 discussions with companies that Google does 01:57:33
2 business with, correct?

3 A. That's correct.

4 Q. And I'm just asking you, generally
5 speaking, when you found out that these files had 01:57:38
6 been taken, didn't you personally think that it
7 would be fair to give notice to Mr. Kalanick that
8 Mr. Levandowski may have taken some files?

9 MR. VERHOEVEN: Object to form.

10 Same instruction on attorney-client 01:57:49
11 privilege and work product doctrine.

12 THE DEPONENT: I personally did not think
13 that. The reasons I did not think that are
14 privileged.

15 Q. (By Mr. Gonzalez) Did you take any 01:58:02
16 steps, at that point, to make sure that somebody
17 gave notice to Uber so that they wouldn't use these
18 files that were taken?

19 MR. VERHOEVEN: Objection.

20 Same instruction. Attorney-client 01:58:14
21 privilege. Work product doctrine.

22 THE DEPONENT: I took no steps to tell
23 anyone to do that, and the reasons for that, again,
24 are privileged.

25 Q. (By Mr. Gonzalez) By the way, if those 01:58:33

1 files are important, why didn't you sue the guy who 01:58:35
2 took them?

3 MR. VERHOEVEN: Objection.

4 Instruct you not to answer under the
5 grounds of attorney-client privilege and work 01:58:45
6 doc- -- work product doctrine.

7 Q. (By Mr. Gonzalez) Did you consider suing
8 the guy who took the files?

9 MR. VERHOEVEN: Same instruction.
10 Instruct you not to answer for the same basis. 01:58:56

11 Q. (By Mr. Gonzalez) When did you learn
12 that there were some email that came to your
13 company inadvertently from Gorilla?

14 A. I don't recall exactly when I -- when I
15 heard about that. Again, sometime toward the end 01:59:15
16 of 2016, something -- somewhere around that time.

17 Q. Do you recall that it came to your
18 attention at around the time that the email was
19 received?

20 A. Yes, I think it was, all right, you know, 01:59:38
21 some -- somewhere around that time.

22 Q. When you saw that email, did it cause you
23 any concern?

24 MR. VERHOEVEN: Same instruction. To the
25 extent that the question -- the response to that 01:59:45

1 I, Rebecca L. Romano, a Certified Shorthand
2 Reporter of the State of California, do hereby
3 certify:

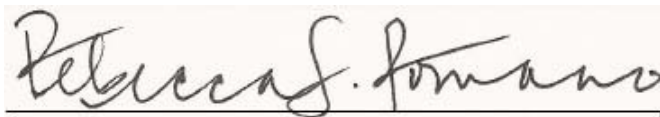
4 That the foregoing proceedings were taken
5 before me at the time and place herein set forth;
6 that any witnesses in the foregoing proceedings,
7 prior to testifying, were administered an oath;
8 that a record of the proceedings was made by me
9 using machine shorthand which was thereafter
10 transcribed under my direction; that the foregoing
11 transcript is true record of the testimony given.

12 Further, that if the foregoing pertains to the
13 original transcript of a deposition in a Federal
14 Case, before completion of the proceedings, review
15 of the transcript [] was [X] was not requested.

16 I further certify I am neither financially
17 interested in the action nor a relative or employee
18 of any attorney or any party to this action.

19 IN WITNESS WHEREOF, I have this date
20 subscribed my name.

21 Dated: August 22, 2017

22
23 

24 Rebecca L. Romano, RPR,
25 CSR. No 12546